

Minutes of the State Board of Health March 9, 2005

The Washington State Board of Health (SBOH) met at the Department of Health Point Plaza East building in Tumwater, Washington. Chair Tom Locke called the public meeting to order at 9:01 a.m. and addressed the attendees with the following statement:

“This is a public meeting of the State Board of Health held under provisions of RCW 43.20. Notice of the meeting was provided in accordance with provisions of RCW 34.05, the Administrative Procedures Act. Those members having any conflict of interest on any item coming before the Board will report that conflict with respect to the particular subject under consideration. In case of challenge of any Board members by the public, the Board shall decide the status of the challenged members to participate before considering the substance of the matter.

Copies of all materials supplied to the Board for today’s meeting have been available since close of business last Friday from the Board’s Tumwater office and on the Board’s Web site at www.sboh.wa.gov. They are also available today, along with anything else we have received since, at the table in the back of the room. To conserve public funds, we have only made as many copies as we feel will be needed, so we may run out of some particularly popular items. If you do not find a document you need, please ask Executive Assistant Desiree Robinson or another Board staff person for one.

Our meeting today is open to the public, so please feel free to listen in on informal discussions involving Board members or staff, including any that may occur during breaks or lunch.”

SBOH members present:

Thomas H. Locke, MD, MPH, Chair
Carl Osaki, RS, MSPH, Vice Chair
Charles Chu, DPM
Ed Gray, MD

Mel Tonasket
Keith Higman
Bill White (for Mary Selecky)
The Honorable David Crump, PhD

SBOH members absent:

Frankie Manning, MN, RN

State Board of Health Staff present:

Craig McLaughlin, Executive Director
Tara Wolff, Health Policy Advisor
Lonnie Peterson, Public Information Officer

Desiree Robinson, Executive Assistant
Bobbi Berry, Assistant to the Board

Guests and Other Participants:

Sofia Aragon, Department of Health
Karen Arbogast, Department of Health
Janna Bardi, Department of Health
Steve Brett, Lane Homes Co.
Scott Burns, Merck Vaccine Division
Bob Carlisle, Clearstream Wastewater Systems
Donna Christian, Citizen
Sally Clark, Lifelong AIDS Alliance

Tim Crose, Pacific County Public Health and Human Services Dept.
Michelle Davis, Department of Health
Jim Dawson, People for Puget Sound
Jerry Deeter, Kitsap County Health District
Mike Desimone, Pacific County Public Health and Human Services Dept.
Bill Dewey, Taylor Shellfish Co./Pacific Coast Shellfish Growers Assoc.

Robin Downey, Pacific Coast Shellfish
Grower Assoc.
Barbara Dugan, Realtor
Tom Eaton, Environmental Protection Agency
Carl Garrison, Citizen
Marguerite Glover, Sequim Assoc. of Realtors
Maryanne Guichard, Department of Health
Ellen Haars, Department of Health
Commissioner Pat Hamilton, Pacific County
Bryan Harrison, Pacific County Public Health
and Human Services Dept.
Patti Hayes, Department of Health
Thorne Hilts, SHOA-Surfside
Claudia Hilts, SHOA-Surfside
Terry Hull, Puget Sound Action Team
J.R. Inman, WOSSA
Terri Jeffreys, Olympic Peninsula Assoc. of
Realtors
Melanie Kimsey, Department of Ecology
Mark Kitabayashi, Thurston Co. Assoc. of
Realtors
Gene Kuest, Shoalwater Tokeland Action
Team
Jennifer Kunkel, Building Industry Assoc. of
Washington
Stephen Larch, Citizen
Steve Marble, Sequim Assoc. of Realtors
James Matteucci, Merck Vaccine
Mike McAleer, Sequim Assoc. of Realtors
Commissioner Mac McDowell, Island County
Cam McIntyre, Planned Parenthood of
Western Washington
Phillip Mear, Citizen

Virginia Meyer, Citizen
Tom Moreland, Habitat for Humanity
Kim Overstreet, Wyeth Vaccines
Jim Patterson, Department of Health/OSS
Rule Development Committee
John Peppert, Department of Health
Bruce Perkins, Benton-Franklin Health
District
Shirley Porter, Citizen
Bill Pritchett, Citizen
Jeff Schouten, Governors Advisory Council
on HIV/AIDS
Ed Stanton, Building Industry Assoc. of
Washington
Art Starry, Thurston County Public Health
Brent R. Stenson, Adams County Health
Department
Rhys A. Sterling, Bill Stuth, Sr./Aqua Test,
Inc.
John Stormon, Department of Ecology
Bill Stuth, Citizen
J. Thomas, WOSSA
Lin Watson, Department of Health
Steve Wecker, Citizen
Roger Wheeler, Building Industry Assoc. of
Washington
James Wiley, Hancor, Inc.
Bob Wood, Public Health–Seattle & King
County/AIDS Nets
Bob Woolrich, Department of Health
Polly Zehm, Department of Ecology

APPROVAL OF AGENDA

Motion: Approve March 9, 2005 agenda

Motion /Second: Osaki/Crump

Approved unanimously

ADOPTION OF JANUARY 12, 2005 MEETING MINUTES

Motion: Approve the January 12, 2005 minutes

Motion/Second: Tonasket/Osaki

Approved unanimously

SBOH ANNOUNCEMENTS AND OTHER BUSINESS

Craig McLaughlin, WSBOH Executive Director, noted that Frankie Manning, WSBOH Member, would not be attending the meeting as she is temporarily posted to Texas. He also announced that

the Governor has appointed The Honorable Mike Shelton, Island County Commissioner to the Board.

Mr. McLaughlin updated the Board on personnel issues and Board meeting scheduling changes. He referred Board members to the materials behind Tab 3 and highlighted some of the key items including state and national budget shortfalls, the scope of work for the consulting project, Executive Order 05-02, the KSTW Channel 11 proposal, and issues concerning transient accommodations guidelines. Mr. McLaughlin then directed the Board's attention to an article in the *New York Times* on newborn screening. He also noted some conferences that may be of special interest to Board members. Mr. McLaughlin noted that he had scheduled many Department of Health (DOH) management courses as requested by Chair Locke.

DEPARTMENT OF HEALTH UPDATE

Bill White, Deputy Secretary of Health, represented Mary Selecky, Secretary of Health and WSOH Member, in her absence. He mentioned Secretary Selecky's reappointment by the Governor and indicated that the Governor's remarks to staff at a management team meeting highlighted continued work on tobacco issues; a strong focus on homeland security efforts; and the importance of Government Management, Accountability, and Performance (GMAP). He also mentioned that state and national Public Health Week is April 4–8, 2005.

Deputy Secretary White noted that DOH's six agency request bills were currently "alive and moving." He also explained that there were a number of onsite sewage bills introduced in the Legislature this session. Keith Higman, WSOH Member, asked about the bills and their differences. Deputy Secretary White explained that a senior official from the Centers for Disease Control and Prevention (CDC) may be stationed at DOH for a 2-year period and that the Department welcomed this development.

Deputy Secretary White was asked to explain the six agency request bills introduced by DOH. He responded that the topics included inspection of hospitals, malpractice insurance, granting authority for the secretary of health, hospital reporting to promote patient safety, newborn screening services, and Hepatitis C expenditures. Mel Tonasket, WSOH Member, and The Honorable David Crump, WSOH Member, asked for more clarification about the hospital reporting bill.

BOARD MEMBER COMMENTS AND CONCERNS

Member Crump said the Children's Health and Well-being Committee met via phone conference. He felt it was an effective way to take care of Board business between meetings. He also posed a question to Mr. McLaughlin regarding staff hiring during a time of budget uncertainty. Mr. McLaughlin said the Board had been devoting an increasing share of its budget to salaries and benefits and was having difficulty covering other costs like meetings and travel. Despite many budget cuts, there had been efforts to continue existing staffing levels. The staff reorganization, once hiring is complete, would cut fixed salaries and benefits costs, allowing more flexibility to cover other costs and to respond to additional cuts in the future.

Member Crump said he supports out-of-state conference attendance because the Board needs to be represented and make important connections; however, he recognized the need to be selective when choosing which conferences the Board should attend. Chair Locke agreed with this statement and mentioned a Japanese quality improvement method described in a book titled, *Lean Thinking*.

Carl Osaki, WSBOH Member, mentioned that the CDC will hold four meetings around the nation to discuss their Futures Initiatives. He said Seattle is one of the four locations and that the meeting would be in April. He encouraged others to sign up and indicated that this might be an opportunity for the Board.

Mr. McLaughlin announced that Candi Wines, WSBOH Staff, had accepted a position with the University of Washington effective March 10, 2005. Mr. McLaughlin indicated that he would miss Ms. Wines and that he wished her well in her new job. Chair Locke indicated that a letter of appreciation should be sent to Ms. Wines. He added that he enjoyed working with her and that she would be missed by all.

CONTINUATION OF HIV/AIDS POLICY DISCUSSION—OTHER PERSPECTIVES

Mr. McLaughlin, sitting in for Ms. Wines, introduced the guests and referred the Board to the materials behind Tab 6. Jeff Schouten, Chair of the Governor's Advisory Council on HIV/AIDS, made comments on areas of concern including partner notification; counseling, testing, and referral; oral or written consent; and special issues in the jail setting (for more details, refer to the memo dated January 31, 2005 titled, Board of Health Presentation). Member Crump asked Dr. Schouten about the distinction between “anonymous” and “confidential” testing, and asked what would happen in instances when the person in question was not competent to provide written consent.

Sally Clark, Director of Community Resources, Lifelong AIDS Alliance, recognized the Department of Health staffers who have helped update the rule. She said that Lifelong supported the goals of the WAC revision but had some points to address. These points included separate, written informed consent; education for physicians on how to talk with patients; availability of anonymous and confidential; partner notification (although this may be an issue that is being resolved); and behavior presenting eminent danger (for more details, refer to the memo dated February 8, 2005 regarding HIV/AIDS policy discussion). Ms. Clark said that Lifelong supports HIV testing for all. Member Crump asked Ms. Clark about the benefits of knowing ones' HIV status. Ms. Clark said it is a great benefit for individuals to know of their HIV status early on. Not only would it improve the individual's quality of life, but early detection would also mean that partner notification would take place sooner. Member Tonasket said there are gang initiation practices taking place in tribes (such as having multiple sexual partners in one night) that may be putting members of the tribes at risk. Ms. Clark said this could be considered a non-standard behaviors endangering activity. She said the concern in this case would not be names reporting so much as looking at the behaviors endangering part of the code.

Robert Wood, Director of HIV/AIDS Control for Public Health–Seattle & King County and a member of the AIDSNET Council, said that PHSKC provides approximately 20,000 HIV tests each year. Dr. Wood said that separate consent has raised some red flags for people about whether it is appropriate to be tested at the time of their visit or if they need to do some more thinking about it. If people cannot have “one-stop shopping,” they often do not receive the services they need. (Refer to the PowerPoint presentation for more details.)

Cam McIntyre, Vice President of Medical Affairs and Medical Director, Planned Parenthood of Western Washington, explained that in the 24 Planned Parenthood clinics in Western Washington they were finding very few HIV positive clients. Dr. McIntyre suggested removing “as appropriate” from the section on consent and said the rule is unclear about what informed consent would require.

He suggested the DOH might develop a standard document that could be used to provide the information that would be required. Ed Gray, WSBOH Member, asked about home testing and rapid testing. Chair Locke asked Dr. McIntyre to say more about his idea of using a form to document verbal consent.

The Board took a short break and reconvened 11:22 a.m.

PUBLIC TESTIMONY ON ISSUES OTHER THAN IMMUNIZATION AND ONSITE SEWAGE RULES

No public testimony was given.

LEGISLATIVE UPDATE

Mr. McLaughlin directed the Board's attention to the materials behind Tab 8 and provided the Board with a handout. The second Legislative cut-off occurred on Monday, March 7, 2005. Bills that are not moving forward are considered technically dead. Bills the Board has taken action on that are moving forward are:

- 2SHB 1415 Commercial passenger vessels
- 2SHB 1488 PBDEs
- 2SHB 1516 Health services for children
- SHB 1545 Adult family homes; SSB 5650 Adult family homes
- SHB 1737 Public health improvement
- HB 1771 School breakfast programs
- HB 2038 Smoking ban in public places; SB5909 Indoor smoking
- SSB 5186 Physical activity
- SSB 5305 Mercury-containing vaccines
- 2SHB 1458 On-site sewage/marine areas
- 2SSB 5491 Infant screening services
- SSB 5493 Hepatitis C state plan
- SSB 5575 Higher ed student population

Charles Chu, WSBOH Member, asked about the likelihood of HB 1771 and SSB 5186 passing. Mr. McLaughlin said there is strong support for HB 1771 but it would be looked at in the context of the state budget. He can only speculate if people will be willing to spend money on implementation. SSB 5186 has not moved in past years, but there is more support for it this session than in the past. Member Chu also asked about Initiatives 330 and 336. These initiatives focus on malpractice and tort reform. Mr. McLaughlin said his sense is that it will be an end-game issue and the various strategies have not been worked out. Mr. McLaughlin offered to find someone who could provide more information.

Member Crump asked about HB 2038. Mr. McLaughlin explained that it addressed indoor smoking in public places.

Chair Locke asked when the next Legislative cut-off would be. Mr. McLaughlin said the last day to consider bills in their house of origin is Wednesday, March 16, 2005.

WAC 246-100-166 IMMUNIZATION CR-102 HEARING

Chair Locke discussed different phases of rule making related to immunization policy. The process being discussed today is sometimes referred to as “housekeeping,” he said. Other issues that will need to be dealt with through other future processes include the sustainability of the vaccine financing system, other candidate vaccines, and convenience exemptions. Tara Wolff, WSBOH Staff, reviewed the materials behind Tab 9. She recognized the good work of the Department of Health staff (Karen Arbogast, Ruth McDougall, and Tawney Harper) then introduced Janna Bardi, Department of Health Immunization Program Manager. Ms. Bardi introduced Karen Arbogast, Department of Health, who would be available to answer technical questions about the program. Ms. Bardi presented a slideshow about the rule revision process (see slideshow behind Tab 9 for more information). She oriented the Board to the document summarizing proposed changes to the public rule and directed the Board to the matrix summarizing public comments received and discussed the nature of the comments. Member Tonasket asked for clarification about why the transfer exemption was removed. Ms. Bardi explained that this was done to align the rule with the statute. Member Crump asked about the definition of a school administrator and about the retention of exemption documents for 3 years, even if a student has left a particular school. Board members then discussed the timing and nature of other immunization-related rule making and policymaking issues.

Motion: The Board adopts the revised WAC 246-100-166 as published in WSR 03-09-126 and amended as set forth in the summary of changes

Motion/Second: Crump/Chu

Approved unanimously

The Board recessed for lunch at 12:15 p.m. and reconvened at 1:35 p.m.

CHAPTER 246-272A WAC, SMALLER ONSITE SEWAGE SYSTEM RULE REVISION CR-102 HEARING

Chair Locke directed the Board’s attention to the DOH presentation behind Tab 10. Member Osaki acknowledged DOH staff for processing the information presented today, the Rule Development Committee (RDC) for developing a draft rule for the Board’s consideration, and stakeholders (including those in the audience today) for providing information to the Board which will help it to update the rule. He introduced Maryanne Guichard and Dave Lenning from the Department of Health. Ms. Guichard’s slideshow focused on areas of controversy, current onsite sewage system (OSS) rules and changes to the rule, and the purpose and regulations of the rule (see the slideshow behind Tab 10 for more information). Ms. Guichard also provided a handout of the bill that is currently being heard in the Legislature.

Member Higman asked about inspection of OSS. Ms. Guichard said DOH is asking local health to inform people of the importance of inspection and encourage it. He also asked how the public would be educated to conduct their own inspections. Ms. Guichard said a guidance document is being developed. They would like to build on existing success stories.

Member Osaki noted that local health will be enforcing the rule and wondered how it would influence their current activities. Ms. Guichard said that local health jurisdictions have been very active in the process of developing the rules.

Chair Locke opened the meeting to public testimony and explained the ground rules to the audience.

Public Testimony:

	Name	Representing	Testimony
1.	Polly Zehm	Department of Ecology	Spoke about her agency's support of the draft rule.
2.	Bob Carlile, Wastewater Engineer	Clearstream Wastewater Systems	Spoke about his organization's concerns of the rule.
3.	Bob Woolrich	Department of Health, Office of Food Safety and Shellfish	Spoke about his program's work to prevent shoreline contamination and how that relates to the OSS rule. Urged the Board to adopt particular parts of the regulation.
4.	Mike Desimone, Tim Crose, Bryan Harrison, Commissioner Pat Hamilton	Pacific County Community Development	Spoke about supporting smaller drain fields, the unrealistic idea of self-inspection of OSS and the amount of time it would take to train the public how to self inspect, the fiscal impact of adding more inspectors to their staff, and water quality studies done in Pacific County. He urged the Board to look at Pacific County's programs.
5.	Rhys Sterling, Attorney	Bill Stuth, Sr. and Aqua Test, Inc.	Spoke about letters submitted to Kelly Cooper, DOH. Suggested looking at alternative sewage systems and making them separate regulations.
6.	Tom Eaton	Environmental Protection Agency	Spoke about the Coastal Zone Management Act. Encouraged the Board to require inspections at the time of property transfer.
7.	Mike McAleer	Sequim Association of Realtors	Concerned about documentation of system failure and data collection. Spoke about lot size issues and the impacts of staff increases.
8.	Marguerite Glover	Sequim Association of Realtors	Spoke about domestic wastewater treatments, lot size, and training of the public on self-inspection.
9.	Steve Marble	Sequim Association of Realtors	Concerned about lot size in Clallam County.
10.	Jim Dawson	People for Puget Sound	Concerned about water pollution from septic systems and renewable permits.
11.	Terry Hull	Puget Sound Action Team	Participated on the RDC and expressed appreciation for the RDC's work. Supports sections of the OSS rule but is concerned the rule falls short to protect Puget Sound's marine waters.
12.	Roger Wheeler	Building Industry Association of Washington	Believes there will be problems with the OSS rule in Clallam County. Believes the small, residential users will be penalized and large systems will be overlooked.
13.	Ed Stanton	Building Industry Association of Washington	Has concerns with operation and maintenance (O&M) provisions and believes O&M should be mandated. Also raised concerns about lot size.

	Name	Representing	Testimony
14.	Jerry Deter, Environmental Health Director	Kitsap County Health District	Participated on the RDC. Believes language in the draft rule has been improved and adequately improves public health.
15.	Carl Garrison	Himself	Sees problems with the current draft and thinks it should be rejected in its current form. Requests his name be removed from any documents that go forward in their current form.
16.	Commissioner Mac McDowell	Island County	Asked about questions submitted by Rufus Rose to DOH that were unanswered. Concerned the RDC draft has been revised too much and has not had buy-in from the RDC. Also concerned about nitrates in agricultural counties.
17.	Bill Pritchett	Himself	Has concerns about costs/cost benefits and grandfathering of current lots. Believes there are too many unanswered questions.
18.	Gene Kuest	Shoalwater Tokeland Action Team	Apposes regulations as proposed. Will institute legal action if the draft rule is unchanged.
19.	Tom Moreland	Habitat for Humanity of Kitsap County	Concerned about minimum lot sizes. Would like to have an objective standard applied. Would raise costs of low-income homes.
20.	Jennifer Kunkel	Building Industry Association of Washington	Spoke on behalf of Steve Brett who has concerns about minimum lot size and impacts on builders. Concerned about DOH and SBOH entering the realm of environmental quality.
21.	Bill Dewey	Taylor Shellfish Company/Pacific Coast Shellfish Growers Association	Agrees with the update of the OSS rule but believes there should be significant language revisions.
22.	Thorne Hilts	Surfside Homeowner's Association/Ocean Park	Says nitrates have never been found on Surfside property. Is opposed to the rule as written.
23.	Art Starry, Environmental Health Director	Thurston County Public Health	Believes the draft rule is a reasonable approach and deserves serious consideration.
24.	Steve Wecker	Himself	Has concerns about the regulations of pressure systems and timers.
25.	Jim Patterson	OSS RDC Member	Participated on the RDC. Has concerns about O&M, BOD and CBOD, and pressure distribution.

Chair Locke thanked everyone who testified and officially closed public testimony. The Board will decide next steps. He noted that bills being considered by the Legislature could affect the rule. Member Osaki recommended that the Board process the information presented today, ask questions if needed, and consider carrying the topic over to May. If the Legislature creates statutes that affect

the current rule, the Board will have to look at the changes and their significance. The Board will not vote on this issue today. The May meeting will be held in Union at the Alderbrook Resort and Spa.

Member Osaki asked Ms. Guichard for clarification on revisiting the rule after 4 years and what the review means. Ms. Guichard said they would gather info on the rule changes and bring it back to the Board as a report. It would be the Board's decision whether to recommend further rule making.

Member Osaki asked Mr. Lenning for clarification on grandfathering.

Member Tonasket wanted clarity regarding testimony about large volumes of waste being dumped into Puget Sound versus testimony about systems without problems. Ms. Guichard referred Member Tonasket's question to John Stormon, Department of Ecology. Mr. Stormon said his agency tries to reduce sewage spills and other polluting material. The ongoing program is extensive. He offered to present a report at another meeting. Member Tonasket also had questions about unfunded mandates. Regarding unfunded mandates, Ms. Guichard said the rule would be burdensome to local health and additional resources will be needed.

Member Crump asked to have the following items addressed by written correspondence: (1) coordination with the EPA, (2) transfer notice on sale, and (3) local health officer authority. Janice Adair, Department of Health, will address Member Crump's items.

Deputy Secretary White stated that there will always be contention and noted that many of the same issues brought up in today's testimony have been brought up several times in the past.

Motion: To continue rule hearing on WAC 246-272A regarding OSS rules to May 2005 Board meeting.

Motion/Second: Osaki/Crump

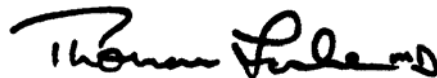
Approved unanimously

Member Tonasket requested that DOH or legal counsel help answer questions he has about unfunded mandates. Ms. Adair stated there is a decision package to fund planning required by the OSS rule. The decision package is attached to current legislation.

ADJOURNMENT

Chair Locke adjourned the meeting at 4:39 p.m.

WASHINGTON STATE BOARD OF HEALTH



Thomas Locke M.D., Chair